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### **DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.4.

### **JURISDICTION AND AUTHORITY**

2. Under TEX. FIN. CODE § 156.103, Powers of Commissioner,  
  
In addition to any other action, proceeding or remedy authorized by law, the commissioner may institute an action in the commissioner's name to enjoin a violation of this chapter or a rule adopted under this chapter.
3. Commissioner Payne seeks in this lawsuit to enforce Chapter 156 of the Texas Finance Code, and regulations issued thereunder. Chapter 156 is in Subtitle E, OTHER FINANCIAL BUSINESSES, under Title 3, FINANCIAL INSTITUTIONS AND BUSINESSES, of the Finance Code.
4. Under § 17.47 of the DTPA, the Consumer Protection and Public Health Division of the Office of the Attorney General may bring an action whenever it has reason to believe that any person is engaging in, has engaged in, or is about to engage in any false, misleading or deceptive act or practice in the conduct of any trade or commerce.
5. Under § 17.47(d) of the DTPA the Court may make such orders or judgments as are necessary to compensate identifiable persons for damages or to restore money or property acquired by means of any unlawful act or practice.

### **VENUE**

6. Venue of this suit lies in El Paso County, Texas for the following reasons:
  - a. Under the DTPA § 17.47(b), venue is proper because Defendant has done business in El Paso County, Texas; and
  - b. Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) venue is proper in El Paso

County, Texas because all or a substantial part of the events or omissions giving rise to the claims occurred in El Paso County, Texas.

### **PARTIES**

7. Plaintiff COMMISSIONER DANNY PAYNE is charged with enforcing the Texas Mortgage Broker License Act.

8. The Attorney General is authorized by the Texas Constitution, Art. 4, § 22, to enforce the laws of Texas. Section 17.47 of the DTPA authorizes the attorney general to bring enforcement actions under the DTPA.

9. Defendant CLAUDIA ZAVALA is a resident of El Paso County, Texas, who may be served with process at her business address, 2009 Montana, El Paso, Texas 79903.

### **EXHIBITS**

10. The factual allegations in this pleading relating to unauthorized mortgage broker activity are supported and sworn to in an affidavit by Douglas Foster, Director of Examinations with the Savings and Loan Department of Texas Texas, in a Certification of Official Records by Sandra Weller, Director of Licensing with the Savings and Loan Department of Texas, and in an affidavit by Beatrice C. Hernandez, an Examiner with the Savings and Loan Department of Texas. The affidavits and certificates are attached as Exhibits A, B and C.

### **PUBLIC INTEREST**

11. The Attorney General has reason to believe that Defendant has engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendant has caused and will continue to cause injury, loss and damage not only to Texas consumers, but also to legitimate businesses which lawfully conduct trade and commerce in Texas, including those which

make authorized mortgage broker transactions. The Consumer Protection and Public Health Division of the Office of the Attorney General believes that this action is in the public interest.

### **TRADE AND COMMERCE**

12. Defendant has, at all time described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

### **ACTS OF AGENTS**

13. Whenever it is alleged in this Petition that Defendant did any act, it is meant either that the Defendant performed or participated in the act, or that the Defendant’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

### **NOTICE**

14. The Consumer Protection Division did not inform Defendant of the alleged unlawful conduct prior to filing suit because immediate and irreparable injury, loss or damage will occur as a result of such delay in obtaining a Temporary Restraining Order.

### **SUMMARY OF THE CASE**

15. Defendant had been the holder of a mortgage broker license issued by the Savings and Loan Department of Texas. However, as of January 8, 2004, on request of Interim Commissioner Douglas Foster, the Department issued an Order revoking that license, by reason of Defendant’s illegal and fraudulent acts in her mortgage broker business, in violation of TEX. FIN. CODE § 156.303(a)(3), (5) and (6).

16. When Defendant applied for and obtained this license, she notified the Commissioner in writing of her use of the assumed name AMIRACLE MORTGAGE GROUP, at 2009 Montana, El Paso, Texas 79903. However, she also operates a business known as ABC MORTGAGE HOMES AND LOANS, a/k/a ABC MORTGAGE LOANS AND HOMES, located at 2009 Montana, El Paso,

Texas 79903. She has not notified the Commissioner in writing of the other assumed name(s) that she is using, nor of the address where it is located.

17. Defendant receives applications from prospective borrowers for the purposes of making a mortgage loan from Defendant's own funds or from the funds of another person.

18. Defendant advertises and holds herself out as engaging in or conducting the business of a mortgage broker in this state.

19. Defendant fails to prominently display a mortgage broker license in her offices.

20. Defendant employs persons who do not hold an active mortgage broker or loan officer license but who perform or are expected to perform the acts of a mortgage broker or loan officer.

21. Defendant fails to prominently display a loan officer license for each person acting as a loan officer.

22. Despite the revocation of her license, Defendant continues to operate as a mortgage broker in the State of Texas.

23. Defendant has failed and refused, and continues to fail and refuse, to file an Annual Report with the Savings and Loan Department.

24. At the time an applicant submits an application to Defendant, Defendant fails to provide to the applicant a disclosure that specifies the nature of the relationship between applicant and Defendant, the duties Defendant has to the applicant, and how Defendant will be compensated.

25. Defendant receives money, or the equivalent of money, as a fee or profit because of or in consequence of Defendant acting as a mortgage broker or loan officer for consumer loans.

26. In addition, Defendant is engaging in false, misleading or deceptive acts or practices in the conduct of her business, in that her operating as a mortgage broker constitutes a representation that she is authorized to do so, when that is not the case.

27. Defendant is engaging in false, misleading or deceptive acts or practices in the conduct of her business, in that she fails to disclose that she is not authorized to operate as a mortgage broker in the State of Texas, or to accept fees as a mortgage broker in the State of Texas.

### **APPLICABLE LAW**

28. Under § 156.002, TEX. FIN. CODE,

(5) "Loan Officer" means an individual sponsored by a licensed mortgage broker for the purposes of performing the acts of a mortgage broker.

(9) "Mortgage broker" means a person who receives an application from a prospective borrower for the purposes of making a mortgage loan from that person's own funds or from the funds of another person.

29. Under § 156.004, TEX. FIN. CODE,

At the time an applicant submits an application to a mortgage broker, the mortgage broker shall provide to the applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated. The finance commission, by rule, shall promulgate a standard disclosure form to be used by the mortgage broker.

30. Under § 156.201, TEX. FIN. CODE,

(a) A person may not act in the capacity of, engage in the business of, or advertise or hold that person out as engaging in or conducting the business of a mortgage broker in this state unless the person holds an active mortgage broker license or is exempt under Section 156.202

(b) An individual may not act or attempt to act as a loan officer unless the individual at the time is:

(1) licensed under this chapter;

(2) sponsored by a licensed mortgage broker and acting for the mortgage broker; or

(3) exempt under Section 156.202.

(c) Each mortgage broker licensed under this chapter is responsible to the

commissioner and members of the public for any act or conduct performed under this chapter by the mortgage broker or a loan officer sponsored by or acting for the mortgage broker

31. Under TEX. FIN. CODE, § 156.204(b),

A mortgage broker may conduct business under a corporate structure, partnership, or any other business form or as an independent contractor for a corporation, partnership, or any other business entity. Before conducting mortgage broker activities under, through, or for a corporation, partnership, or other business entity, a mortgage broker must notify the commissioner, in writing, of any corporate name, partnership name, assumed name, or any other name under, through, or for which the mortgage broker conducts activities for which a license is required under this chapter. The corporation, partnership, or other business entity under, through, or for which the mortgage broker conducts business is not required to be separately licensed as a mortgage broker provided that all individuals who perform mortgage broker activities are licensed as mortgage brokers or loan officers. The commissioner shall require proof of compliance with this subsection at the time the mortgage broker applies for and renews a license

32. Under TEX. FIN. CODE, § 156.212,

(c) The license certificate of a mortgage broker shall be at all times prominently displayed in the mortgage broker's place of business. The branch office certificate shall be at all times prominently displayed in the mortgage broker's branch office.

(d) A loan officer license certificate shall be at all times prominently displayed in the office of the mortgage broker for whom the loan officer primarily conducts business.

33. Under TEX. FIN. CODE, § 156.213,

(a) Each licensed mortgage broker shall file an annual report with the Savings and Loan Department.

34. Under TEX. FIN. CODE, § 156.402,

(b) The commissioner, the attorney general, or a mortgage applicant may

bring an action to enjoin a violation of this chapter.

35. Under TEX. FIN. CODE, § 156.406,

(b) A person who received money, or the equivalent of money, as a fee or profit because of or in consequence of the person acting as a mortgage broker or loan officer without an active license or being exempt under this chapter is liable for damages in an amount that is not less than the amount of the fee or profit received and not to exceed three times the amount of the fee or profit received, as may be determined by the court. An aggrieved person may recover damages under this subsection in a court.

36. Under TEX. ADMIN. CODE, § 80.10,

No Mortgage Broker or Loan Officer may:

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a Mortgage Loan;

37. Under TEX. BUS. & COMM. CODE § 17.46(a),

False, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful;”

38. Under TEX. BUS. & COMM. CODE § 17.46(b)(3),

“Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification of goods or services” is a false, misleading or deceptive act or practice;

39. Under TEX. BUS. & COMM. CODE § 17.46(b)(5),

“Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not” is a false, misleading or deceptive act or practice;



40. Under TEX. BUS. & COMM. CODE § 17.46(b)(24),

“The failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed” is a false, misleading or deceptive act or practice;

### **VIOLATIONS**

41. By engaging in the above described conduct, Defendant has violated and is continuing to violate the following laws:

(a) § 156.004, TEX. FIN. CODE, by failing to deliver to each applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated;

(b) § 156.201, TEX. FIN. CODE, by acting in the capacity of, engaging in the business of, or advertising or holding that person out as engaging in or conducting the business of a mortgage broker in this state when the person does not hold an active mortgage broker license;

(c) § 156.201, TEX. FIN. CODE, by employing persons who act or attempt to act as a loan officer when the individual at the time is not licensed and sponsored by a licensed mortgage broker and acting for the mortgage broker;

(d) § 156.204(b), TEX. FIN. CODE, by utilizing an assumed name under, through, or for which she conducts activities for which a mortgage broker license is required under Texas law, without notifying the commissioner, in writing, of such assumed name.

(e) § 156.212, TEX. FIN. CODE, by failing to prominently display a mortgage broker's license and the license of each loan officer in each place of business operated by her;

(f) §156.213, TEX. FIN. CODE, by failing to file an annual report with the Savings and Loan Department;

(g) §156.406, TEX. FIN. CODE, by receiving money, or the equivalent of money, as a fee or profit because of or in consequence of the person acting as a mortgage broker or loan officer without an active license;

(h) §80.10(4), TEX. ADMIN. CODE, by receiving applications from consumers and otherwise acting as a mortgage broker or loan officer when she does not hold an active mortgage broker license;

(i) § 17.46(b)(3) of the DTPA by operating as a mortgage broker without holding an active mortgage broker license, thereby causing misunderstanding as to certification by the Savings and Loan Department;

(j) § 17.46(b)(5) of the DTPA by operating as a mortgage broker without holding an active mortgage broker license, thereby representing that the services provided have approval or characteristics which they do not have;

(k) § 17.46(b)(24) of the DTPA by failing to disclose that she is not authorized to operate as a mortgage broker in the State of Texas;

(l) § 17.46(b)(24) of the DTPA by failing to disclose that she is not authorized to receive money, or the equivalent of money, as a fee or profit because of or in consequence of acting as a mortgage broker.

### **EQUITABLE RELIEF**

42. Commissioner Payne asks that the Court temporarily restrain and permanently enjoin Defendant from operating as a mortgage broker, as defined by Texas law, without being licensed as such.

43. Commissioner Payne further asks that the Court temporarily restrain and permanently enjoin Defendant from employing loan officers, as defined by Texas law, without the loan officer being licensed as such.

44. Commissioner Payne further asks that the Court temporarily restrain and permanently enjoin Defendant from advertising or offering services that would cause people to believe that Defendant is a mortgage broker, as defined by Texas law, unless and until Defendant holds an active mortgage broker license.

45. Commissioner Payne further asks that the Court temporarily restrain and permanently enjoin Defendant from failing to deliver to each applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated.

46. Commissioner Payne asks further that the Court temporarily restrain and permanently enjoin Defendant from failing to prominently display a mortgage broker's license and the license of each loan officer in each place of business operated by her.

47. Commissioner Payne asks further that the Court temporarily restrain and permanently enjoin Defendant from failing to file an annual report with the Savings and Loan Department.

48. Commissioner Payne asks further that the Court temporarily restrain and permanently enjoin Defendant from utilizing an assumed name, corporate name, partnership name or any other name, under, through, or for which she conducts activities for which a mortgage broker license is required under Texas law, without notifying the commissioner, in writing, of such name.

49. Commissioner Payne and the State of Texas further ask that the Court temporarily restrain and permanently enjoin Defendant from charging, receiving, or contracting for any money, or the equivalent of money, that is in any way related to her services as a mortgage broker or those

of her employees or agents acting as loan officers until and unless Defendant obtains a license to be a mortgage broker and the employees or agents obtain active licenses to be loan officers under her sponsorship.

50. Commissioner Payne and the State of Texas further ask that the Court, under its equity powers, to order Defendant to make restitution and disgorge not less than, and no more than three times, the sum of all money, or the equivalent of money, paid by consumers to Defendant since January 8, 2004 as a fee or profit because of or in consequence of Defendant acting as a mortgage broker or employing a loan officer without an active license;

**NECESSITY OF IMMEDIATE RELIEF  
TO PRESERVE DEFENDANTS' ASSETS**

51. Plaintiff the State of Texas requests immediate relief by way of an Ex Parte Temporary Restraining Order freezing Defendant's assets to preserve and protect such assets from dissipation so the victims of Defendant's actions can receive the restitution to which they are entitled. Defendant's assets are subject to dissipation for the reason that Defendant misrepresents her businesses as being authorized mortgage brokerage companies when in fact they are not. Defendant is not properly licensed or bonded and does not account to the Texas Savings and Loan Department for her activities. She collects large sums of money from consumers without being legally entitled to do so. As a result, all of the money received by Defendant under the guise of being a mortgage broker is contraband

**OTHER RELIEF**

52. The State of Texas asks the Court to order Defendant to compensate all of her customers since January 8, 2004 for actual damages, and to restore any money or property which may have been acquired by means of any unlawful act or practice.

53. The State of Texas asks the Court to order Defendant to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of \$20,000.00 per violation of the DTPA.

54. The State of Texas asks the Court to issue a declaratory judgment that Defendant is engaged in unlawful mortgage brokerage activity because she is not a licensed mortgage broker.

55. The State of Texas asks the Court to order Defendant to pay reasonable attorney fees, pursuant to TEX. GOVT. CODE § 402.006.

### **PRAYER**

56. WHEREFORE, Plaintiffs Commissioner Payne and the State of Texas pray that an Ex Parte Temporary Restraining Order be granted and Defendant be cited according to law to appear and answer herein; that after reasonable notice and hearing a Temporary Injunction be issued; and upon final hearing a Permanent Injunction be issued, restraining and enjoining Defendant, her successors, assigns, officers, agents, servants, employees, attorneys and any other person in active concert or participation with Defendant whether such acts are performed under her own name, under the assumed name “Amiracle Mortgage Group” or under any other assumed name or legal entity, from engaging in the following acts or practices, until and unless Defendant obtains a license to be a mortgage broker and her employees or agents obtain active licenses to be loan officers under her sponsorship:

a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendant currently or hereafter in Defendant’s possession, custody or control except in response to further orders or subpoenas in this cause;

b. Transferring, spending, hypothecating, concealing, encumbering,

withdrawing, removing or allowing the transfer, removal, or withdrawal from any bank, savings association, credit union or other financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, sports memorabilia, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendant without further order of this court;

- c. Acting in the capacity of a mortgage broker or loan officer;
- d. Engaging in the business of a mortgage broker or loan officer;
- e. Advertising or holding herself out as engaging in or conducting the business of a mortgage broker or loan officer;
- f. Originating any residential mortgage loan on behalf of any person;
- g. Making any misrepresentation to any person, whether directly or indirectly, regarding her license status;
- h. Displaying or using a previous mortgage broker license certificate, letterhead, or business card in connection with any mortgage broker or loan officer activity;
- i. Receiving an application from a prospective borrower for the purpose of making, arranging, or obtaining a residential mortgage loan for the borrower unless;
- j. Interviewing any prospective mortgage loan applicant or advising any residential mortgage loan applicant on any matter related to making, arranging, or obtaining a residential mortgage loan, which includes qualifying or pre-qualifying a loan applicant or quoting or discussing available interest rates, loan products, or loan pricing with any loan applicant;
- k. Receiving or retaining any funds paid by or on behalf of a residential

mortgage loan applicant;

l. Completing or assisting in the completion of a residential mortgage loan application for or on behalf of any prospective borrower;

m. Receiving or retaining any compensation for loan origination activity, including any loan origination fee, application fee, underwriting fee, or other fee, of whatever type or description;

n. Employing, compensating, or associating with any person who is not licensed or exempt under the Mortgage Broker License Act who is expected or required to act as a loan officer or mortgage broker for or on behalf of Defendant;

o. Advertising or offering services that would cause people to believe that Defendant, her employees and agents, are loan officers as defined by Texas law, unless and until they hold active loan officer licenses;

p. Failing to deliver to each applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated;

q. Failing to prominently display the license of each loan officer in each place of business operated by Defendant;

r. Failing to file an annual report with the Savings and Loan Department;

s. Utilizing an assumed name, corporate name, partnership name or any other name, under, through, or for which she conducts activities for which a mortgage broker license is required under Texas law, without notifying the commissioner, in writing, of such name.

t. Charging, receiving, or contracting for any money, or the equivalent of

money, that is in any way related to her services as a mortgage broker or those of her employees or agents acting as loan officers;

52 In addition, Plaintiff State of Texas respectfully prays that this Court will:

a. Order Defendant to make restitution and disgorge not less than, and no more than three times, the sum of all money, or the equivalent of money, paid by consumers to Defendant since January 8, 2004 as a fee or profit because of or in consequence of Defendant acting as a mortgage broker or employing a loan officer without an active license, or, in the alternative, award actual damages and restore any money or property which may have been acquired by means of any unlawful act or practice;

b. Adjudge against Defendant civil penalties in favor of Plaintiff State of Texas in the amount of \$20,000.00 per violation of the DTPA;

c. Issue a declaratory judgment that Defendant is engaged in unlawful mortgage brokerage activity because she is not a licensed mortgage broker;

d. Order Defendant to pay Plaintiff State of Texas attorney's fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

DATED this \_\_\_\_\_ day of May, 2004.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

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First Assistant Attorney General



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